

Introduced by Senator Rainey

February 23, 1999

An act to amend Section 11350.1 of, and to repeal and add Section 11350 of the Welfare and Institutions Code, relating to support.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as introduced, Rainey. Support obligations to CalWORKs recipients.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families.

Existing law requires that in any case of separation or desertion of a parent or parents from a child or children that results in the granting of CalWORKs benefits, the noncustodial parent or parents shall be obligated to the county for an amount equal to the amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction or, in the absence of an order, the amount of support that would have been specified in such an order.

This bill would repeal this requirement.

Existing law requires that, as a condition of CalWORKs eligibility, the applicant assign to the county any rights to support which he or she may have from another person, either in his or her own behalf or in behalf of any other family member.

This bill would permit the district attorney and a support obligor, in any action in which support has been assigned to the county by an CalWORKs recipient, to stipulate to an order that suspends the accrual of interest, subject to the meeting of specified conditions.

Existing law provides that, in any action brought by the district attorney for the support of a minor child or children receiving CalWORKs benefits, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. Under existing law, judgment in an action brought pursuant to these provisions may be rendered pursuant to a noticed motion.

This bill would further provide that a support order made pursuant to the above provisions may be retroactive to the date of filing of the complaint or other initial pleading.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11350 of the Welfare and
2 Institutions Code is repealed.

3 ~~11350. (a) In any case of separation or desertion of a~~
4 ~~parent or parents from a child or children which results~~
5 ~~in aid under this chapter being granted to that family, the~~
6 ~~nonecustodial parent or parents shall be obligated to the~~
7 ~~county for an amount equal to the following:~~

8 ~~(1) The amount specified in an order for the support~~
9 ~~and maintenance of such family issued by a court of~~
10 ~~competent jurisdiction; or in the absence of such court~~
11 ~~order, the amount specified in paragraph (2).~~

12 ~~(2) The amount of support which would have been~~
13 ~~specified in an order for the support and maintenance of~~
14 ~~the family during the period of separation or desertion~~
15 ~~provided that any such amount in excess of the aid paid~~
16 ~~to the family shall not be retained by the county, but~~
17 ~~disbursed to the family.~~

18 ~~(3) The obligation shall be reduced by any amount~~
19 ~~actually paid by such parent directly to the custodian of~~
20 ~~the child or to the district attorney of the county in which~~

~~the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.~~

~~(b) The district attorney shall take appropriate action pursuant to this section as provided in subdivision (l) of Section 11475.1. The district attorney may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.~~

~~(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the nonecustodial parents' incomes and placing the figure obtained in the column for nonecustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the district attorney.~~

~~SEC. 2. Section 11350 is added to the Welfare and Institutions Code, to read:~~

~~11350. (a) In any action where support has been assigned pursuant to Section 11477, the district attorney and the obligor may stipulate to an order that suspends the accrual of interest, subject to all of the following conditions:~~

~~(1) The obligor shall be required to make immediate payment of all outstanding, unassigned child support arrearages.~~

~~(2) The obligor shall be required to make specified monthly payments toward assigned child support arrearages, with each monthly payment to be not less than 2 percent of all assigned support owed by the obligor at the time the agreement is made.~~

~~(3) The obligor shall be required to meet all current child support payment obligations.~~

1 (b) If an obligor who is a party to an agreement
2 entered into pursuant to subdivision (a) fails to meet any
3 of the conditions required by that agreement, interest
4 shall begin to accrue on any outstanding support
5 obligations.

6 SEC. 3. Section 11350.1 of the Welfare and Institutions
7 Code is amended to read:

8 11350.1. (a) Notwithstanding any other statute, in
9 any action brought by the district attorney for the support
10 of a minor child or children, the action may be prosecuted
11 in the name of the county on behalf of the child, children,
12 or a parent of the child or children. The parent who has
13 requested or is receiving support enforcement services of
14 the district attorney shall not be a necessary party to the
15 action but may be subpoenaed as a witness. Except as
16 provided in subdivision (e), in an action under this
17 section there shall be no joinder of actions, or
18 coordination of actions, or cross-complaints, and the
19 issues shall be limited strictly to the question of parentage,
20 if applicable, and child support, including an order for
21 medical support. A final determination of parentage may
22 be made in any action under this section as an incident to
23 obtaining an order for support. An action for support or
24 parentage pursuant to this section shall not be delayed or
25 stayed because of the pendency of any other action
26 between the parties.

27 (b) Judgment in an action brought pursuant to this
28 section, and in an action brought pursuant to Section
29 11350, if at issue, may be rendered pursuant to a noticed
30 motion, that shall inform the defendant that in order to
31 exercise his or her right to trial, he or she must appear at
32 the hearing on the motion. *An order for support made*
33 *pursuant to this section may be retroactive to the date of*
34 *filing of the complaint or other initial pleading.*

35 If the defendant appears at the hearing on the motion,
36 the court shall inquire of the defendant if he or she desires
37 to subpoena evidence and witnesses, if parentage is at
38 issue and genetic tests have not already been conducted
39 whether he or she desires genetic tests, and if he or she
40 desires a trial. If the defendant's answer is in the



1 affirmative, a continuance shall be granted to allow the
2 defendant to exercise those rights. A continuance shall
3 not postpone the hearing to more than 90 days from the
4 date of service of the motion. If a continuance is granted,
5 the court may make an order for temporary support
6 without prejudice to the right of the court to make an
7 order for temporary support as otherwise allowed by law.

8 (c) In any action to enforce a spousal support order the
9 action may be pled in the name of the county in the same
10 manner as an action to establish a child support
11 obligation. The same restrictions on joinder of actions,
12 coordination of actions, cross-complaints, and delay
13 because of the pendency of any other action as relates to
14 actions to establish a child support obligation shall also
15 apply to actions to enforce a spousal support order.

16 (d) Nothing contained in this section shall be
17 construed to prevent the parties from bringing an
18 independent action under the Family Code and litigating
19 the issues of support, custody, visitation, or protective
20 orders. In that event, any support, custody, visitation, or
21 protective order issued by the court in an action pursuant
22 to this section shall be filed in the action commenced
23 under the Family Code and shall continue in effect until
24 modified by a subsequent order of the court. To the
25 extent that the orders conflict, the court order last issued
26 shall supersede all other orders and be binding upon all
27 parties in that action.

28 (e) (1) After a support order, including a temporary
29 support order and an order for medical support only, has
30 been entered in an action brought pursuant to this
31 section, the parent who has requested or is receiving
32 support enforcement services of the district attorney shall
33 become a party to the action brought pursuant to this
34 section, only in the manner and to the extent provided by
35 this section, and only for the purposes allowed by this
36 section.

37 (2) Notice of the parent's status as a party shall be
38 given to the parent by the district attorney in conjunction
39 with the notice required by subdivision (e) of Section
40 11478.2. The complaint shall contain this notice. Service

1 of the complaint on the parent in compliance with
2 Section 1013 of the Code of Civil Procedure, or as
3 otherwise provided by law, shall constitute compliance
4 with this section. In all actions commenced under the
5 procedures and forms in effect on or before December 31,
6 1996, the parent who has requested or is receiving
7 support enforcement services of the district attorney shall
8 not become a party to the action until he or she is joined
9 as a party pursuant to an ex parte application or noticed
10 motion for joinder filed by the district attorney or a
11 noticed motion filed by either parent. The district
12 attorney shall serve a copy of any order for joinder of a
13 parent obtained by the district attorney's application on
14 both parents in compliance with Section 1013 of the Code
15 of Civil Procedure.

16 (3) The parent who has requested or is receiving
17 support enforcement services of the district attorney is a
18 party to an action brought under this section for issues
19 relating to the support, custody, and visitation of a child,
20 and for restraining orders, and for no other purpose. The
21 district attorney shall not be required to serve or receive
22 service of papers, pleadings, or documents, or participate
23 in, or attend any hearing or proceeding relating to issues
24 of custody or visitation, except as otherwise required by
25 law. Orders concerning custody and visitation may be
26 made in an action pursuant to this subdivision only if
27 orders concerning custody and visitation have not been
28 previously made by a court of competent jurisdiction in
29 this state or another state and the court has jurisdiction
30 and is the proper venue for custody and visitation
31 determinations. All issues regarding custody and
32 visitation shall be heard and resolved in the manner
33 provided by the Family Code. Except as otherwise
34 provided by law, the district attorney shall control
35 support and parentage litigation brought pursuant to this
36 section, and the manner, method, and procedures used in
37 establishing parentage and in establishing and enforcing
38 support obligations unless and until the parent who
39 requested or is receiving support enforcement services
40 has requested in writing that the district attorney close his



1 or her case and the case has been closed in accordance
2 with federal regulation.

3 (f) (1) A parent who has requested or is receiving
4 support enforcement services of the district attorney may
5 take independent action to modify a support order made
6 pursuant to this section while support enforcement
7 services are being provided by the district attorney. The
8 parent shall serve the district attorney with notice of any
9 action filed to modify the support order and provide the
10 district attorney with a copy of the modified order within
11 15 calendar days after the date the order is issued.

12 (2) A parent who has requested or is receiving support
13 enforcement services of the district attorney may take
14 independent action to enforce a support order made
15 pursuant to this section while support enforcement
16 services are being provided by the district attorney with
17 the written consent of the district attorney. At least 30
18 days prior to filing an independent enforcement action,
19 the parent shall provide the district attorney with written
20 notice of the parent's intent to file an enforcement action
21 that includes a description of the type of enforcement
22 action the parent intends to file. Within 30 days of
23 receiving the notice, the district attorney shall either
24 provide written consent for the parent to proceed with
25 the independent enforcement action or notify the parent
26 that the district attorney objects to the parent filing the
27 proposed independent enforcement action. The district
28 attorney may object only if the district attorney is
29 currently using an administrative or judicial method to
30 enforce the support obligation or if the proposed
31 independent enforcement action would interfere with an
32 investigation being conducted by the district attorney. If
33 the district attorney does not respond to the parent's
34 written notice within 30 days, the district attorney shall
35 be deemed to have given consent.

36 (3) The court shall order that all payments of support
37 shall be made to the district attorney in any action filed
38 under this section by the parent who has requested, or is
39 receiving, support enforcement services of the district
40 attorney unless support enforcement services have been

1 terminated by the district attorney by case closure as
2 provided by federal law. Any order obtained by a parent
3 prior to support enforcement services being terminated
4 in which the district attorney did not receive proper
5 notice pursuant to this section shall be voidable upon the
6 motion of the district attorney.

7 (g) Any notice from the district attorney requesting a
8 meeting with the support obligor for any purpose
9 authorized under this section shall contain a statement
10 advising the support obligor of his or her right to have an
11 attorney present at the meeting.

12 (h) For the purpose of this section, “a parent who is
13 receiving support enforcement services” includes a
14 parent who has assigned his or her rights to support
15 pursuant to Section 11477.

16 (i) The Judicial Council shall develop forms to
17 implement this section. These forms shall be available no
18 later than July 1, 1998.

